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No. 725

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

CAPITOL HILL SOUTHEAST CITIZENS ASSOCIATION, *Petitioner*,

v.

THEODORE I. COE, ET AL., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION

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OPINIONS BELOW

The opinions of the United States Court of Appeals for the District of Columbia Circuit appear in ___ U. S. App. D. C. ___, 219 F. 2d 33.

STATUTES AND REGULATIONS INVOLVED

In addition to the statutes and regulations cited by petitioner herein, these respondents include the following regulations which appear in the appendix to this brief:

ZONING REGULATIONS OF THE DISTRICT OF COLUMBIA

Sec. II.—Use Districts

Sec. III.—Residential District

COUNTER-STATEMENT OF THE CASE

Two of the respondents, The Real Estate and Improvement Company of Baltimore City and The Washington Terminal Company, appellants below, filed, respectively, Appeals No. 3596 and 3597 (R-81) with the Board of Zoning Adjustment for the District of Columbia wherein they sought special exceptions to the zoning regulations permitting them to establish a temporary automobile parking lot for a period of two years at New Jersey Avenue and D Street, S. E., Lots 800, 809, 811, 812, 814, 818, 801, Square 692 (R-81).

After due notice, a public hearing was begun in the above numbered appeals before said Board on June 10, 1953, with further hearings therein on July 15, August 13, and September 23, 1953 (R-81, 92, 127, 138).

At the June 10 and July 15, 1953 hearings various witnesses testified both for and in opposition to the granting of the special exception here in issue (R-81, 92). At the August 13, 1953 hearing the Board entertained a motion by the opponents of the exception for a rehearing, which was denied. On September 23, 1953, a plan of the proposed lot was submitted to the Board (R-138, 139), and by letter dated October 1, 1953, the Board notified the proponents as

well as the arguments of the special exceptions that the appeals before it had been granted September 22, 1953, subject to the conditions contained in the Board's order (R. 76-80).

The property in question covers a total area of approximately 22,000 sq. ft. with frontages of about 78 ft. on C Street, 123 ft. on D Street and 48 ft. on New Jersey Avenue, S. E. A portion of this area overlies the railroad tunnel providing access to Washington Terminal for trains arriving from and departing for the south. With the exception of the lot occupied by the Congressional Hotel, which is zoned Residental 90 "C", the remaining portions of square 692 are zoned as a Residental 60 "C" Area District (R-141, 142). This classification permits dwellings, apartment houses, flats, tenements, hotels, lodging or boarding houses, private clubs, fraternities, hospitals for humans and certain other uses (App. 1a-5a). The area is bounded on the north by the new House Office Building; although this building is not subject to the zoning law, its use is comparable to the uses permitted in commercial zones. Properties to the east, west and south of square 692 are located in a residential use district and utilized almost entirely for residence and apartment purposes. The entire area of square 693, which lies southwest of the area in question, is zoned first commercial, as is the frontage along the east side of First Street between D Street and North Carolina Avenue[1] (R-77). The members of the Board made a personal inspection of the property, and, based thereon and on the records and evidence adduced before it, the Board made certain findings of fact and, on September 22, 1953, entered an order granting, subject to certain specified restrictions, the appeals for the special exceptions here involved (R-77).

The petitioner, appellee below, is a corporation known as Capitol Hill Southeast Citizens Association, some of whose members are individual fee owners of parcels of land in

[1] The record erroneously describes this street as South Carolina Avenue.

square 632 and squares contiguous thereto. Feeling that they were aggrieved by the aforesaid order, they sought a mandatory injunction in the United States District Court for the District of Columbia, requiring the Board of Zoning Adjustment to vacate the said order (R. 26-30). Subsequent to the filing of the complaint, respondents The Washington Terminal Company and The Real Estate and Improvement Company of Baltimore City, appellants below, were added as parties defendant (R. 31), and respondents Samuel M. Selden, Frank Albertoli and Robert R. Rodenberg, appellants below, were joined as intervenor-defendants (R. 143). Counsel for all parties agreed that the matter was one which could be properly disposed of on motions for summary judgment (R. 146). Cross-motions were filed and the matter came on for hearing on November 30, 1953, Judge Matthew F. McGuire presiding. Argument on the cross-motions concluded on December 1, 1953. The lower court filed a memorandum opinion on December 8, 1953 (R. 155-158), and, on December 18, 1953 entered judgment issuing the injunction, vacated the order of the Board of Zoning Adjustment wherein the Board had granted its appeals numbered 3596 and 3597 authorizing the temporary automobile parking lot in question, and referred the case back to the Board with instructions to vacate and set aside its order (R. 158, 159). The respondents herein appealed from the judgment of the District Court and prevailed in the United States Court of Appeals for the District of Columbia Circuit in having the judgment of the District Court reversed.

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. The case involves only the question of the correctness of the allowance by the Board of Zoning Adjustment of the special exceptions concerning the use of the subject property

for the parking of automobiles for a trial period of two years.

The statutes and regulations involved are limited in their operation to the District of Columbia and therefore this Court should not review the case on a writ of certiorari.

ARGUMENT

The sole question before the lower court concerned the correctness of the trial court's decision overruling the order of the Board of Zoning Adjustment. The Court of Appeals reversed the judgment of the trial court, thus holding that the Board of Zoning Adjustment properly allowed the special exceptions.

Rule 19 of the Revised Rules of this Court indicates the character of the reasons for which a review on writ of certiorari will be granted. Applying those reasons to the instant case, it is obvious that no question of general importance is involved. It seems equally certain that the case does not involve any question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this Court. Quite to the contrary this case relates to an opinion based on a statute of purely local application, which opinion applies only to the facts herein.

This Court has stated on numerous occasions that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia Circuit which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia v. Pace*, 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *Del Vecchio v. Bowers*, 296 U. S. 280, 285, 56 S. Ct. 190, 80 L. Ed. 229; *Busby v. Electric Utilities Employees Union, Etc.*, 323 U. S. 72, 89 L. Ed. 78, 65 S. Ct. 142; *Fisher v. U. S.*, 328 U. S. 463, 90 L. Ed. 1382, 66 S. Ct. 1318. That the statutes herein are clearly restricted in their operation to the District of Columbia cannot be dis-

puted and it is equally clear that, under this Court's decisions, the instant petition sets forth no grounds upon which a review by writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

REGULATIONS INVOLVED

Zoning Regulations of the District of Columbia

(The date of latest revision follows text)

SECTION II.—*Use districts*

In order to regulate the location of commerce, business, trades, and industries and the location of all buildings, designed or occupied for specified uses, the District of Columbia is hereby divided into use districts, of which there shall be four, known as—

(a) Residential.
(b) First commercial.
(c) Second commercial.
(d) Industrial.

These districts are shown upon maps designated as "use maps."

Except as hereinafter provided, no building shall be erected or altered, nor shall any building or premises be used for any purpose other than is permitted in the use district in which such building or premises is located.

The "A" restricted, "A" semirestricted, and "B" restricted area districts shall also be construed as use districts. See section XIV, XV(a) XV(b), and XVI(a). (June 30, 1936.)

SECTION III.—*Residential district*

In the residential district all buildings and premises, except as otherwise provided in these regulations, shall be erected for and used exclusively as—

1. Dwellings.

2. Apartment houses, flats, and tenements in the "A", "B", "C", and "D" area districts, and in the "B" restricted area district as provided in section XVI (*a*). (As amended June 30, 1936.)

3. Hotels in the "B", "C", "D" area districts having not less than 30 rooms reserved exclusively for transient

guests, and where food, drinks, or refreshments are prepared and sold to be eaten in a restaurant on the premises where sold: Provided, such restaurant is located entirely within the building with no entrance from the street, and no part of said restaurant or the entrance thereto is visible from a sidewalk, and provided further, that there shall be no sign or display indicating the existence of such restaurant visible from the outside of the building. (As amended June 30, 1936, June 6, 1942 and June 9, 1944.)

3. (*a*) Commercial uses which distinctly pertain to or are appropriate adjuncts to hotels as follows: Drug stand, including soda fountain, perfumery shop, florist shop, barber shop, beauty parlor, pressing or tailoring establishment, cigar or news stand, and uses similar to those enumerated in this paragraph, may be established in hotels in the residential district when approved by the Board of Zoning Adjustment as provided in Section XXIII. (June 6, 1942.)

4. Lodging or boarding houses in the "A", "B", "B" restricted, "C", and "D" area districts. (As amended June 30, 1936.)

5. Churches.

6. Private clubs, fraternities, and lodges in the "A", "B", "C", and "D" area districts, except those the chief activity of which is a service customarily carried on as a business. (As amended Mar. 21, 1924, and June 30, 1936.)

7. Hospitals, sanitariums, and clinics for human beings in the "A", "B", "C", and "D" area districts. (As amended Feb. 28, 1922, Feb. 21, 1924, and June 30, 1936.)

8. Transportation rights of way. (As amended December 3, 1941.)

9. Farms, trucks gardens, nurseries, and greenhouses, except in the "A" restricted area district. (As amended June 30, 1936.)

10. Accessory buildings and uses of property customarily incidental to uses other than dwelling uses which are permitted in a residential district, when located on the same lot

and not involving the conduct of a business on the premises. (As amended June 30, 1936.)

The following usual accessories of a residence located on the same lot with that residence and not involving the conduct of a business shall be allowed:

(*a*) The office of a physician, dentist, or other persons residing on the premises and including home occupations, engaged in by the occupants of a dwelling, not involving the conduct of a business on the premises, provided that no window display nor any sign other than a name plate not exceeding 1 square foot in area and bearing only the name and occupation of the occupant shall be allowed as appertaining to use as offices or for home occupation as permitted under this section.

(*b*) A private garage located in a fireproof compartment within, adjoining, or forming an addition to a building, or both, provided that the total private garage storage facilities on any one lot shall not exceed 900 square feet in area. (As amended May 7, 1928, Oct. 20, 1932, June 30, 1936 and April 12, 1950.)

(*c*) A private garage located in the rear yard with a dwelling, and not less than 10 feet from any point of such dwelling nor less than 20 feet from the building line of any street upon which the lot abuts; provided that if the lot will not permit a garage to be located in conformity with this regulation a garage may be approved by the Board of Zoning Adjustment, as provided in Section XXIII of these regulations; and provided further that the total private garage storage facilities on any one lot shall not exceed 900 square feet in area. (As amended Oct. 20, 1932, June 30, 1936, June 7, 1940 and April 12, 1950.)

(*d*) A public storage garage in an apartment house, where the floor area of said garage does not exceed one-fourth of the total floor area designed for use or used by the tenants; provided the vehicular entrances or exits are located 75 feet or more back of the building line of the nearest street, or are so located that dangerous traffic or

otherwise objectionable conditions, as may be determined by the Board of Zoning Adjustment as provided in section XXIII of these regulations will not be created. (Feb. 5, 1930, amended June 30, 1936 and Oct. 10, 1938.)

(*e*) Open parking spaces accommodating motor driven vehicles of the persons residing in the building or buildings on the premises, provided no part of such parking space which is located on the same lot with the building it is intended to serve shall be permitted within ten feet of the outside walls of the building; and provided further that any such parking space between the outside walls of a building and the line of any street upon which the lot abuts shall require the approval of the Board of Zoning Adjustment, as provided under Paragraph 26, Part 2, Section XXIII of these regulations. (February 13, 1943, as amended July 29, 1949.)

11. A private garage which is not appurtenant to any of the above uses and housing not more than two motor driven vehicles, nor exceeding 450 square feet in area, if located 50 feet or more back of the building line of the nearest street, and abutting and opening directly upon a public alley. (As amended Oct. 20, 1932, June 30, 1936 and April 12, 1950.)

12. In the "A", "B", "B" restricted, "C", and "D" area districts, a public-storage garage, or the temporary parking of motor vehicles on an alley lot, so recorded on the records of the Surveyor, District of Columbia, January 1, 1928, when no part of such garage or the space for such parking is located within 75 feet of any street building line, and when vehicular entrances and exits open directly on a public alley. (As amended Feb. 13, 1932 and June 30, 1936.)

13. Temporary use of premises by fairs, circuses, or carnivals, upon compliance with the police regulations of the District of Columbia. (Oct. 10, 1938.)

14. Public schools, municipal recreational uses, pumping stations, and fire-engine houses may be erected in any use

district, provided that in the case of a fire-engine house, located in a residential district, a public hearing shall first be held by the Commissioners of the District of Columbia. Police stations shall be located only in commercial or industrial districts. (September 18, 1929, as amended June 9, 1944.)